

REMARKS

Claims 1-22 were examined, with claims 1, 12, 13 and 22 being independent. The present response is accompanied by a Request for Continued Examination (RCE). In the present Response, no claims were amended, no claims were canceled, and no claims were added. Thus, after entry of this Amendment, claims 1-22 will remain pending in the application.

Rejections under 35 U.S.C. §102(b)

Claims 1, 2, 11-14, 20 and 22 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,004,111 to McCarthy. The Patent Office has taken the position that FIG. 1 of McCarthy shows an upwardly projecting fold.

Applicant respectfully traverses the rejection.

McCarthy includes layers 26, 36 and 40, with layer 40 being the uppermost layer. A first adhesive layer 34 is disposed between layers 26 and 36, and a second, partial adhesive layer 38 is disposed between layers 36 and 40. As a result of the partial adhesive layer 38 between layers 36 and 40, roughly half of the uppermost layer 40 remains un-adhered or loose. The un-adhered or loose portion of the uppermost layer 40 is referred to in McCarthy as tab portion 24. Tab portion 24 is not folded. In fact, no part of uppermost layer 40 is folded.

In contrast, each of independent claims 1, 12, 13 and 22 recite a film composite for a contained enclosure in which only the uppermost layer of the film composite comprises an upwardly projecting fold.

McCarthy fails to disclose the claimed “upwardly projecting fold,” and it appears to Applicant that the Patent Office has mischaracterized tab portion 24 as an ‘upwardly projecting fold.’

Because each and every element of independent claims 1, 12, 13 and 22 is not disclosed in any of the cited references, they cannot be anticipated and are allowable. The claims that depend from claims 1, 12, 13 and 22 directly or indirectly are allowable for at least the same reasons. Withdrawal of the rejection is respectfully requested.

In addition, there is no motivation in McCarthy to fold any part of the uppermost layer 40.

To do so would reduce the size of the tab portion 24, making it more difficult, or impossible to grasp.

Rejection under 35 U.S.C. §103(a)

Claims 1-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,934,544 to Han et al. (Han) in view of McCarthy.

The Patent Office acknowledge that Han fails to disclose the fold being only in the uppermost layer, and is relying on the teachings of McCarthy for the disclosure that it is known to provide a grasping tab and fold from the uppermost layer alone (referring to element 24). The Patent Office has concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to provide the composite film of Han with the fold and grasping tab being formed by the uppermost layer alone, in order to reduce the amount of material used by providing a single layer in the folding tab.

Applicant respectfully traverses the rejection.

As noted in the response to the first Office Action, Han discloses an innerseal 18 with a first sealing portion 20, a second sealing portion 22, and a fold-over portion 24 positioned between the first sealing portion 20 and the second sealing portion 22. Each portion 20, 22, 24 is formed from a single continuously extending sheet of common layered material. The composite foil 30 from which the innerseal 18 is formed includes a plurality of layers 32, 36, 40 with adhesive layers 34, 38 being provided between the layers as shown in FIG. 3. In Han, each layer of the composite foil 30 is included in the fold-over portion 24. Thus, Han fails to disclose a film composite for a contained enclosure in which only the uppermost layer of the film composite comprises an upwardly projecting fold.

McCarthy fails to cure the deficiencies of Han. McCarthy also fails to disclose a film composite for a contained enclosure in which only the uppermost layer of the film composite comprises an upwardly projecting fold.

McCarthy is nothing more than the type of design discussed in the background of the present application. (See Substitute Specification at Page 3, Lines 4-27). As noted in the background, the

loose tab portion 24 of uppermost layer 40 of McCarthy is disadvantageous because: 1) it involves a laborious laminating process to obtain the partial layer of adhesive 38; and 2) the loose end or tab portion 24 is susceptible to buckling, creasing and destruction as a result of the friction involved in rotating the screw closure. As a result, one of ordinary skill in the art attempting to reduce the amount of material used in Han would not be led to consider the teachings of McCarthy, other than perhaps for the teaching of using a partial layer of adhesive.

Even if one of ordinary skill in the art were motivated to attempt to minimize the amount of material used, and were to combine Han and McCarthy to attempt to form a fold and grasping tab from the uppermost layer alone, the present invention would not be obtained. The probable result of the combination of Han and McCarthy would include a multilayer foldover portion 24 (as in Han), and only a partial layer of adhesive (as in McCarthy), resulting in an un-adhered section of layer 40 (as in McCarthy). Such a design would not include only the uppermost layer of the film composite comprising an upwardly projecting fold. Such a design is not only a departure from the claimed invention - it also is unusable for its intended purpose.

If perhaps the Patent Office is suggesting that the probable result of the combination of Han and McCarthy involves folding only the upper layer of Han to form an upwardly projecting fold, Applicant disagrees that the present invention would be obtained. First, there is no motivation in either of the references not to fold the underlying layers of Han. Second, there is no motivation in McCarthy to fold any part of the uppermost layer 40. Third, there is no motivation in McCarthy to use anything other than a partial layer of adhesive. Even assuming one of ordinary skill in the art was motivated to fold only the uppermost layer of Han, with only a partial layer of adhesive underlying layer 40 of Han, a sufficiently large fold could not be formed, or it would be too small to grasp. In any event, a portion of the uppermost layer still would remain un-adhered, interfering with use.

There is no motivation to combine Han and McCarthy and, even if combined, they do not result in the presently claimed invention. As a result, independent claims 1, 12, 13 and 22 are patentable over the cited references, alone or in combination, and the claims that depend therefrom

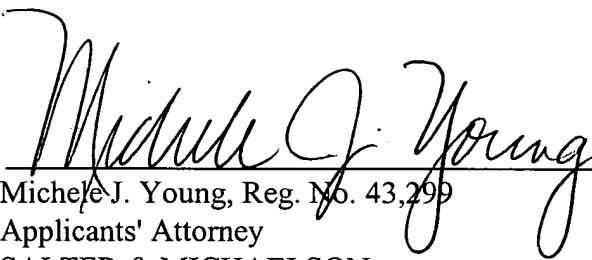
directly or indirectly are patentable for at least the same reasons. Withdrawal of the rejection is respectfully requested.

CONCLUSION

For the reasons set forth hereinabove, it is respectfully submitted that all of the claims presently contained in the application are in condition for allowance, and reconsideration and entry of this amendment are respectfully requested. Since this application is under Final, should the Examiner not find this application in condition for allowance, it is respectfully requested that the Examiner telephone the undersigned attorney to discuss amendments which might, in the Examiner's view, place the application in condition for allowance.

If this response is not considered timely filed and a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check, please charge the deficiency to or credit any overpayment to Deposit Account No. 19-0120.

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